

EXHIBIT 3

1 A. I have not. I have no part of
2 those records.

3 Q. Have you ever played a role in
4 hiring any medical school graduates into
5 residency programs?

6 A. Yes.

7 Q. At what residency programs?

8 A. I served as what's known as the DIO
9 or designated institutional official for
10 multiple hospitals while I was VP of GME for
11 Hospital Corporation of America.

12 Q. Where was that located?

13 A. There were several -- a multitude
14 of hospitals.

15 Q. You can take a minute to explain
16 just briefly so I understand.

17 A. Yes. I served for what was known
18 as HealthONE, which were hospitals in the
19 greater Denver area; for -- what was the
20 hospital called -- a hospital in Kansas City.
21 I'm totally blanking.

22 Q. Your C.V. is there in case it's
23 helpful for you.

24 A. Yeah. I'm trying to remember the

1 name of the one. So it was Research Medical
2 Center in Kansas City which oversaw the --
3 included the hospitals in the Kansas City area
4 that were owned by HCA, Ogden Regional Medical
5 Center which included the Salt Lake City
6 hospitals owned by HCA and Eastern Idaho
7 Regional Medical Center.

8 Q. Were the residency programs
9 involved in those medical centers only about
10 pediatric emergency or critical care?

11 A. No, they were not.

12 Q. All right. So it was a broader
13 range of residency programs?

14 A. Yes, it was.

15 Q. Was it the full range of residency
16 programs available at those hospitals?

17 A. I'm not sure what you mean.

18 Q. Yeah. So I'm not trying to ask you
19 a trick question in any sense. I'm just trying
20 to understand in your role as DIO for these
21 organizations that we were just referring to,
22 were you overseeing the admission to the
23 residency programs for all the residency
24 programs that those facilities offered at any

1 given time?

2 A. I was involved -- the decision is
3 the program director's, but I oversee the
4 processes, procedures, and the program
5 directors.

6 Q. Have you ever served as the program
7 direct for any residency programs?

8 A. No, I have not.

9 Q. Have you ever interviewed anybody
10 applying to a residency program?

11 A. Yes, I have.

12 Q. Approximately how many times?
13 Hundreds? Five? You know, somewhere --

14 A. Probably not hundreds, but close to
15 it.

16 Q. Okay. So a large number of times?

17 A. Yes.

18 Q. In your experience -- in your
19 various roles, was an interview always involved
20 before a resident would get offered a residency
21 program as far as you're aware?

22 A. In most cases, the last step after
23 all the screening that is done, you know,
24 verification of board scores, eligibility for

1 What else, in your experience, is
2 involved in the offering of a residency
3 position to a resident?

4 A. The initial screening is done to
5 make sure that the person is eligible for
6 residency. So presence of medical school
7 graduation, confirmation, or ECFMG
8 certification.

9 So it's sort of that's the first
10 step. If they don't graduate medical school or
11 they don't have an ECFMG certification, the
12 process would stop.

13 Q. Okay.

14 A. Following that process, one that
15 has letters of reference, Dean's
16 recommendation, board scores; and there's
17 usually a cutoff to determine of those who then
18 obtain an interview.

19 Q. When you say "of those," you mean
20 cutoff of the board scores?

21 A. Board scores, letters of reference,
22 recommendations.

23 Q. Any other information collected or
24 reviewed in connection with residency program

1 applications that you recall, you know, sitting
2 here today?

3 A. Usually not, no.

4 Q. Is there usually an application
5 form, like, they actually fill out like a job
6 application?

7 A. They don't anymore. It's all done
8 through the electronic system called ERAS.

9 Q. Okay. Previously, do you know
10 whether there had been applications to
11 residency programs in, say, the 2011 time
12 frame?

13 A. There would have not been. They
14 would have all been ERAS.

15 Q. Even then?

16 A. Yes.

17 Q. In your experience, do residents
18 get paid?

19 A. Yes, they do.

20 Q. Do they get paid through any
21 sources of funding in particular?

22 A. The hospital pays them.

23 Q. Does the hospital typically
24 withhold taxes?

1 A. Typically, yes.

2 Q. When you say "typically," do you
3 know of any circumstances when they don't
4 withhold taxes?

5 A. I believe it's different -- sorry.
6 Hospitals employ them or the university
7 sometimes does. Withholding is done as would
8 be per whatever the employment standards are
9 for taxes and other fees.

10 Q. Which would require, in addition to
11 other potential information, a social security
12 number?

13 A. That is correct.

14 Q. Do you know what the source of the
15 social security number is for residents coming
16 into residency programs? So I can say that
17 another way. Strike that. Let me restate
18 that.

19 Do you know from where the
20 residency programs get the social security
21 number for the applicants coming to them?

22 A. Again, I'm not involved in the HR
23 department, but my understanding is it comes
24 from the applicant.

1 Q. In your experience in hiring
2 residents or residency programs, what, if
3 anything, was done with the letters of
4 reference that were submitted?

5 A. Letters of reference are submitted
6 through ERAS and then become part of an
7 electronic file that the program director can
8 review.

9 Q. Do you know if anything else was
10 done typically other than just review them?

11 A. Typically they're just read by the
12 residency director. Sometimes they would also
13 be read by an interviewer prior to an
14 interview.

15 Q. Do you know if there was anything
16 done typically to validate that the letters of
17 recommend were legitimate?

18 A. I know that -- I've never -- I've
19 never seen a residency program do it, and I do
20 not believe that ERAS's normal procedures --
21 sorry -- are to verify them.

22 Q. You mentioned a Dean's
23 recommendation. What is that?

24 A. So for graduates of U.S. medical

1 schools, typically the Dean writes a letter for
2 every graduate, which summarizes their medical
3 school experience and provides evaluation of
4 the student.

5 Q. And for U.S. medical school
6 graduates, you said that as an initial
7 screening for eligibility, there would be
8 verification of medical school graduation; is
9 that correct?

10 A. Correct.

11 Q. How would that usually be
12 accomplished in your experience?

13 A. Through the ERAS process.

14 Q. What do you mean by that?

15 A. The programs themselves don't do
16 it. It's done in the ERAS system. So that's
17 the program that the residents apply through,
18 and that program does the verification of the
19 medical school.

20 Q. For lack of a better term, is it
21 like a portal you can log into and check or
22 how --

23 A. It's a portal you can log into and
24 check.

1 Q. Do you still have any role or
2 responsibilities for any residency programs?

3 A. Not directly anymore.

4 Q. When you say "not directly," do you
5 indirectly?

6 A. I serve on a national committee
7 with the ACGME.

8 Q. What role do you serve with ACGME?

9 A. They have a committee that oversees
10 what's known as their clear clinical learning
11 environment review program, and I serve on that
12 committee.

13 Q. What does the clear committee do?

14 A. It helps them set the standards for
15 the Clear Evaluation program.

16 Q. What is the Clear Evaluation
17 program?

18 A. It evaluates hospitals' learning
19 environments for residencies.

20 Q. Is that there accreditation
21 program?

22 A. It is separate from the
23 accreditation.

24 Q. Is it a higher level than

1 Q. So is your participation with the
2 clear evaluation process, are you sitting on a
3 committee of ACGME?

4 A. Committee, yes.

5 Q. Is that a volunteer position?

6 A. Yes, it is.

7 Q. And when did you begin that?

8 A. I believe about a year and a half
9 ago.

10 Q. Any other current involvement in
11 residency programs?

12 A. Not direct, no.

13 Q. Not directly, but anything else
14 indirectly?

15 A. I still have academic appointments
16 at Columbia University in New York -- sorry,
17 Colorado university and New York Medical
18 College. So I could be asked to give a lecture
19 from time to time within Colorado or in
20 New York to residents.

21 Q. Do residents typically get
22 lectures?

23 A. Yes.

24 Q. So just so that I understand, would

1 A. As chief medical officer with
2 Sky Ridge and my prior role with Westchester
3 Medical Center as chiefs of services, in some
4 cases, I would have directly been hiring staff
5 members for my department. In more senior
6 leadership role, I may have been more involved
7 in not hiring, but contracting groups to
8 provide physicians or occasionally involved in
9 recruitment of certain, you know, high-need
10 specialties.

11 Q. When you refer to staff members
12 just now, were you talking about physicians?

13 A. Yes.

14 Q. In your experience, can you just
15 briefly explain what's involved in the
16 interviewing and hiring of a physician?

17 A. Highly variable depending on who it
18 is and which role. So very different.

19 Q. In your experience, do the
20 hospitals do any sort of background check or
21 identification confirmation of any sort when
22 hiring a physician?

23 A. At the -- it depends on the
24 facility. You know, when -- some facilities

1 you're being asked to provide?

2 A. I believe it was on my expectations
3 from of ECFMG's certification of a physician as
4 it relates to its use, you know, within
5 hospitals of privileging, credentialing,
6 residency application.

7 Q. Would you consider yourself an
8 expert on policies and procedures for
9 organizations like ECFMG, USMLE, and the like?

10 A. I would consider myself an expert
11 on verification of medical school credentials
12 and the use of them.

13 Q. Would you consider yourself to be
14 an expert on ECFMG's policies and procedures or
15 USMLE policies and procedures for entities like
16 that?

17 A. I would, yes, on the processes,
18 yes.

19 Q. When's the last time you reviewed
20 USMLE's policies and procedures?

21 A. I probably looked over what's
22 publicly available when I was involved with
23 residencies.

24 Q. Have you ever discussed USMLE

1 BY MS. McENROE:

2 Q. How do you evaluate the standard of
3 care that you say is applicable to ECFMG'S
4 certification process?

5 A. Sure. One is how they hold
6 themselves out; but two, there are other
7 entities that, as part of their process, are
8 required to verify medical school completion.
9 That would be licensing boards, hospitals for
10 part of the -- sorry, not process of
11 privileging -- credentialing process for which
12 there are accepted standards by Joint
13 Commission, Centers for Medicaid Services.

14 Q. So those other -- in the second
15 category, those others you're saying are
16 required to verify medical school credentials,
17 they also are verifying graduates' medical
18 credentials as well?

19 A. Correct. For a U.S. medical
20 graduate, you're required to do primary source
21 verification.

22 Q. I thought you had said that took
23 place through ERAS?

24 A. For credentialing and privileging,

1 ERAS is not part of the credentialing and
2 privileging. That's for residents.

3 Q. And do you know whether
4 credentialing and privileging uses ECFMG
5 certification as opposed to how you U.S.
6 graduates no longer use ERAS at that point in
7 the process?

8 A. So for credentialing, you would do
9 primary source verification for an American
10 grad -- sorry, U.S. grad; and for a foreign
11 grad, you use ECFMG to attest to the primary
12 source verification.

13 Q. Do you know that that's true for
14 all hospitals?

15 A. That is Joint Commission and CMS's
16 accepted approach.

17 Q. So that's accepted if a hospital
18 were to primary source verify themselves, you
19 don't think that would be sufficient?

20 A. For a foreign grad?

21 Q. Yeah.

22 A. As far as I know, they could; but
23 hospitals in the U.S., the standard is to use
24 ECFMG. I don't know of a prohibition against

1 them doing it.

2 Q. So you're applying the standard of
3 care that you view to be the standard of care
4 that applies to U.S. applicants?

5 A. To verification of medical school
6 graduates.

7 Q. To the application -- to the
8 verification of U.S. medical school graduates;
9 is that what you're saying?

10 A. To the standard that, yeah, primary
11 source would be done.

12 Q. For U.S. graduates?

13 A. Predominantly for U.S. graduates,
14 yes.

15 Q. When you say "predominantly," I'm
16 just trying to understand is there some other
17 measure you're using for anyone other than
18 ECFMG to measure the standard of care for ECFMG
19 for foreign medical graduates?

20 A. What I'm saying is I'm using the
21 standard as applied -- that others use to do
22 the primary source verification.

23 There are multiple processes that
24 use primary source verification. In the

1 setting of foreign grads, ECFMG does it for
2 foreign medical school graduation. And I'm
3 using the standard within healthcare for
4 primary source verification, examples being
5 credentialing as one of them.

6 Q. Are you using as a standard of care
7 any other entity's primary source verification
8 for foreign medical graduates?

9 A. Other sources? No.

10 Q. Other than poking around on ECFMG'S
11 website and documents provided to you by
12 counsel in this case, do you have any other
13 basis to understand or know the policies and
14 procedures ECFMG had in place at the relevant
15 time?

16 A. The only information I have is from
17 ECFMG'S website and what was provided via
18 counsel to counsel.

19 Q. You didn't do any other
20 investigation into ECFMG'S policies and
21 procedures?

22 A. I did not.

23 Q. We've discussed a little bit
24 earlier -- I know some of the names get a

1 to be documented, articulate how the process of
2 certification occurs should be documented.

3 Q. And on what basis are you saying
4 that?

5 A. As what I -- as a standard that
6 would be followed for a certifying body.

7 Q. What kind of certifying body?

8 A. There are a multitude of certifying
9 bodies, those that do board certification,
10 those that do residency accreditation.

11 Q. Do you consider yourself to be an
12 expert on ECFMG'S policies and procedures?

13 A. I'm not sure what you mean by that;
14 but since at the time they apparently, as far
15 as I know, didn't have them, I'm not sure what
16 you mean by an expert on them.

17 Q. Are you considering yourself to be
18 an expert on the way ECFMG conducted themselves
19 in the 1990s?

20 A. I'm not -- I'm not ECFMG. I'm
21 saying I consider myself to be knowledgeable
22 about at that time what the standard would be
23 for primary source verification, which is the
24 function they achieved and held themselves out

1 for international medical graduates and what a
2 certification body should do to memorialize
3 their policies and procedures to assure it
4 meets standards.

5 Q. When you say "a certification
6 body," what sort of certification bodies do you
7 have personal experience with?

8 A. Certification bodies? Well, I've
9 worked, obviously, within -- we -- within
10 hospitals, we do certification of physicians'
11 credentials and privileges.

12 I've worked ACGME about residency
13 certification.

14 I've worked with professional
15 organizations for fellowship certification.

16 Q. So those are at different stages in
17 the medical career progression timeline, if you
18 will; is that correct?

19 A. They are at different stages, yes.

20 Q. Have you ever had any role or
21 involvement with some of the threshold, if you
22 will, issues as you had articulated it before
23 for authentication of graduate -- or of medical
24 school graduation status?

1 articulated earlier on, about figuring out
2 whether an international medical graduate had
3 actually graduated from medical school?

4 A. So again, in terms of terminology,
5 credentialing is obviously specific to an
6 independent licensed practitioner in a
7 hospital.

8 While as part of residency, we do
9 have primary source verification either by the
10 facility as part of our HR process or ECFMG for
11 people entering residency.

12 Q. Okay.

13 A. And the standard has to be the same
14 because we're held to the same standard for
15 international as U.S.

16 So I am involved in the U.S.
17 standard, but the ECFMG does that function for
18 us and holds themselves out; but the standard
19 has to be the same because the end product is
20 the same. It's entering residency.

21 Q. How is the U.S. standard
22 articulated? Who controls that?

23 A. For facilities, such as a hospital,
24 we rely upon Joint Commission; Centers for

1 A. Again, since I wasn't provided them
2 and all I have is the draft, I can't say that.

3 Q. So you don't know what the policies
4 and procedures are as we sit here today?

5 A. I just know the standard. I don't
6 know what their -- I've asked for policies and
7 procedures, and we haven't been provided any.

8 Q. You say "we." You mean you haven't
9 been provided any, correct?

10 A. Uh-huh, correct.

11 Q. Is it your opinion that ECFMG has a
12 duty or an obligation to make sure that
13 individuals it certifies never break the law?

14 A. Again, I personally believe -- this
15 is from my expertise and knowledge -- that
16 ECFMG'S role is not as a law enforcement agency
17 but a certification body.

18 Q. Okay. And so I just want to make
19 sure I understand.

20 So if ECFMG certifies someone and
21 they go on to commit tax fraud later on in
22 their career, would you then look back and hold
23 ECFMG accountable that they should have figured
24 that out?

1 A. No. But if in order to practice
2 tax, they needed ECFMG certification to be
3 licensed, then they would have never been
4 allowed to practice tax.

5 So I don't -- I don't hold them
6 accountable to law enforcement; but anything
7 that an individual was allowed to do based on
8 their certification, they do have culpability
9 in that case.

10 Q. So you think if a practitioner, a
11 physician, goes on to be a creep, a sexual
12 predator, is that somehow ECFMG'S fault if
13 ECFMG had certified that that person had, in
14 fact, graduated from medical school and passed
15 exams?

16 A. Well, what they did was their
17 action at that point; but one has to
18 acknowledge that if ECFMG did not allow them
19 to -- did not certify them, allowing them to
20 obtain a license, they would not be a physician
21 at that point.

22 Q. Right. But there are U.S. graduate
23 physicians who go on to become creeps, right?

24 A. There are.

1 Q. Sexual predators.

2 MR. VETTORI: Is that a technical
3 term?

4 MS. McENROE: I changed it to
5 sexual predators.

6 BY MS. McENROE:

7 Q. Okay. Is that fair?

8 A. There are, yes. Unfortunately,
9 yes.

10 Q. And do you deem that to be a
11 failure of the medical school community or, you
12 know, or is that that practitioner's fault that
13 they went on to be somebody who breaks the law?

14 A. It is the practitioner's fault, but
15 there is well documented studies that show that
16 there are usually red flags throughout their
17 career if people intervene, that patient would
18 have never been harmed.

19 Q. Usually, like, while they're
20 actually practicing medicine.

21 A. No. There's throughout their
22 entire career. There's well documented studies
23 that show whether it's medical school
24 residency, application processes, there are

1 links throughout a career that could have
2 stopped a progression of events.

3 Q. So I'm just struggling with the
4 idea that this is like the ultimate Monday
5 morning quarterbacking, right? You're saying
6 this person ended up being a sexual predator.
7 So looking back in history, we could pick up
8 bread crumbs where someone could have, said,
9 you don't graduate from middle school; you
10 don't graduate from high school; you don't
11 graduate from college.

12 So I'm just trying to understand --

13 MS. McENROE: Let me finish my
14 question.

15 MR. VETTORI: I am.

16 BY MS. McENROE:

17 Q. I'm just trying to understand how
18 it is you pick where in that line you assume
19 and assign all of the fault, as you have with
20 ECFMG in this case?

21 MR. VETTORI: Objection as to form.

22 THE WITNESS: Where I've assigned
23 fault is the area I was asked to opine on,
24 which is he would not have been able to

1 obtain licensure or enter a residency had
2 ECFMG done the due diligence, picked up
3 the red flags and not certified him or
4 revoked the certification.

5 BY MS. McENROE:

6 Q. So does your opinion basically boil
7 down to an on/off switch, that if ECFMG had
8 said he couldn't get a certificate, therefore,
9 he wouldn't have been able to practice
10 medicine; is that what you're saying?

11 A. Well, as part of application for
12 residency and licensure, there are certain
13 things that are binary, yes or no; and in the
14 absence of them, you don't proceed to any other
15 steps.

16 ECFMG certification is a credential
17 that's binary. You don't have it, you can't
18 get into residency. Absent ECFMG
19 certification, you can't be licensed. It is a
20 binary, that all the other things downstream
21 don't occur towards licensure if that binary
22 doesn't occur.

23 Q. So if we were to take a step
24 forward and say graduation from a residency

1 program is binary, off and on or, you know, one
2 year of supervised practice, however you had
3 described it is binary off and on, you either
4 have that or you don't, that's another place
5 along the line, right? That would either
6 on/off shut off the practicing medicine in the
7 United States?

8 A. It depends on what the requirements
9 were.

10 Q. And further stepping down the line,
11 eventually getting to the point of getting a
12 medical license is also off and on that in any
13 given jurisdiction, if you don't have a medical
14 license, you should not be lawfully be
15 practicing medicine, correct?

16 A. Yes. Without a medical license,
17 you can't practice medicine.

18 Q. So that's another off/on switch,
19 correct?

20 A. A medical license is an off/on,
21 yes.

22 Q. Even if you have a ECFMG
23 certificate?

24 A. If you have an ECFMG certificate

1 but you don't have a license, yes, you cannot
2 practice medicine.

3 Before you ask another question, is
4 this an okay time to break?

5 Q. Sure. Absolutely.

6 A. I saw you reading up. I just
7 wanted to make sure.

8 Q. Go ahead.

9 A. Thank you.

10 MS. McENROE: Let's take a break.

11 (Discussion held off the record.)

12 THE VIDEOGRAPHER: The time is
13 2:10 p.m., and we are going off the
14 record.

15 (Whereupon, a short break was
16 taken.)

17 THE VIDEOGRAPHER: The time is
18 2:20 p.m., and we are back on the record.

19 BY MS. McENROE:

20 Q. We were just looking at your expert
21 report at Exhibit 4 before we went off the
22 record.

23 Do you recall that, Dr. Markenson?

24 A. Yes.

1 Q. And on page 4, there is a, sort of
2 the second full paragraph down, if you will --
3 it's just one line. It says, "ECFMG breached
4 the standard of care in, among others, the
5 following ways."

6 Do you see that?

7 A. Yes, I do.

8 Q. And then there's a number of
9 entries, all starting with the word "failing"
10 on the rest of page 4 and at the top of page 5.

11 Do you see that?

12 A. Yes, I do.

13 Q. And are those each an opinion that
14 you're offering in this case?

15 A. Yes, that is.

16 Q. Okay. And we talked about the
17 standard of care a few minutes ago.

18 Were you referring to the same
19 standard of care here that you have been
20 previously in your report?

21 A. Yes.

22 Q. Okay. I'm not going to go through
23 every single one because some of them
24 conceptually we've talked about already, but

1 I'm going to talk about a couple of them just
2 to make sure I understand.

3 So the third failing down, if you
4 will -- I don't have a better way to refer to
5 it -- says -- oh, no, you know what, we talked
6 about that one already.

7 Keep on going down to the one that
8 talks about the diploma from the University of
9 Ibadan. It says, "Failing to reasonably
10 investigate Akoda's diploma from the University
11 of Ibadan."

12 Do you see that?

13 A. Yes.

14 Q. That looks like the fifth one down.

15 A. Correct.

16 Q. Which diploma are you talking about
17 because I don't believe I've seen a diploma
18 from the University of Ibadan with Akoda's name
19 on it?

20 A. Let's see. Can I go back to the --

21 Q. Sure. You can look at the exhibits
22 we were looking at.

23 A. Thank you so much. Yeah.

24 I am wondering whether that is --